

The 1999 EWA Pilot Project

Background

On December 18, 1998, CALFED released its Revised Phase II Report. The report proposes establishing an Environmental Water Account (EWA) that employs flexible water project operations to achieve fishery and ecosystem benefits more efficiently than the more traditional, prescriptive-regulatory approach. The report proposes implementing the EWA as a one-year pilot project during 1999. In tandem with the Pilot Project, CALFED will work with State and federal agencies and stakeholders to develop the biological and operational rules that would govern use of the EWA should it be incorporated into CALFED's long-term solution. The experience gained from the Pilot Project will provide a foundation of practical experience for developing the biological and operational rules.

Actions associated with the Pilot Project have the potential of reducing water deliveries to urban and agricultural users in the CVP and SWP systems. In addition to these actions, the Department of Interior will implement the fishery actions included in Interior's November 20, 1997 decision on (b)(2). These actions are known as the (b)(2) actions and also have the potential to reduce water deliveries to CVP and SWP contractors.

How is the Pilot Project Established?

CALFED has asked the U.S. Bureau of Reclamation, in its role as a CALFED member agency, to take the lead in acquiring water for the Pilot Project. The USBR has incorporated this effort into its existing effort to acquire water to make up for water supply impacts associated with the implementation of the (b)(2) actions.

Reclamation is developing contracts with three water suppliers capable of supplying up to 160,000 acre-feet of water and one water supplier that is willing to provide 200,000 acre-feet of empty groundwater storage space. Descriptions of the contracts follow.

Surface Water

MWD Castaic Lake

up to 60,000 af

This water is available by exchange. The water can be used in 1999 but must be repaid at a later date. Securing the water requires an up-front option payment and penalty payments if water is not returned on schedule. In the event water is never returned, significant penalties would be incurred.

Groundwater

Kern County Water Agency

50,000 af

The KCWA is willing to sell up to 50,000 af of water stored in the Kern Water Bank. Additional water may be available depending on the terms of the agreement and hydrologic conditions. Securing the water requires an annual option payment, and an additional payment at the time water is delivered.

Kern Water Bank Authority

50,000 af

The KWBA is willing to sell up to 50,000 af of water stored in the Kern Water Bank. At this time, KWBA is willing to discuss a one-year agreement. Securing the water requires an annual option payment, a "call fee" at the time the water is scheduled for delivery, and a "delivery fee".

Empty Storage Space

Santa Clara Valley Water District

200,000 af

SCVWD has up to 200,000 acre-feet of empty storage space under its contract with Semitropic. SCVWD is willing to make this space available on the same terms and conditions as its contract with Semitropic. The space is available for either short-term (one year) or long-term (up to 5 years) use.

In negotiating each of these contracts, Reclamation will secure an option to purchase the listed amount in advance of implementing either Pilot Project actions or the relevant (b)(2) actions. (Interior will implement the (b)(2) actions whether or not the contracts are executed.) The options would be exercised and the water made available to replace reductions in water supply resulting from implementation of these actions.

Exercising the Water Options

Potential impacts resulting from Pilot Project actions or (b)(2) actions are not expected to reduce deliveries to either SWP or CVP contractors during 1999, but to result in decreased amounts of storage in the CVP's Shasta and Folsom reservoirs and the SWP's Lake Oroville. Operating the CVP and SWP so that any actual impacts occur in upstream storage reservoirs provides the opportunity for rains during the winter rainy season to fill those reservoirs and thereby make up those impacts naturally. If this occurs, then there would be no need to exercise the water options. However, if winter rains are insufficient to make up the impacts, the water options would be exercised to make water

available to water users impacted by the Pilot Project actions or (b)(2) actions.

Issues Associated with Exercising the Water Options

The Pilot Project is not a statutory requirement but rather a CALFED proposal to find a more flexible way to improve fisheries protections without placing regulatory restrictions on water users. As such, environmental, urban and agricultural stakeholders tentatively support using some or all of the water options for Pilot Project actions. However, it remains to be resolved whether impacts resulting from the (b)(2) actions may be made up by the water options.

The (b)(2) actions are a statutory requirement of the federal Central Valley Project Improvement Act (CVPIA). Section 3406(b)(2) of the CVPIA applies to the CVP and its contractors, but not to the SWP or its contractors. However, for Interior to implement the (b)(2) actions, DWR must voluntarily agree to assist Interior by changing SWP operations to help provide the required fishery flows or pumping regimes. In taking this voluntary action, DWR may cause water supply reductions to SWP contractors that are not mandated by law. Because these impacts would occur as a result of a voluntary action on the part of DWR, SWP contractors believe that any impacts to their water supply must be replaced at no cost to them.

CVP contractors are in a different position because the CVPIA directly applies to the CVP and its contractors. Section 3406 (b)(2) requires that 800,000 acre-feet of CVP water must be managed for the primary purposes of implementing the fish, wildlife, and habitat restoration purposes of the CVPIA. Because of the complexity of the CVP system and the varied needs of the fishery, it is not possible for Interior to simply count out 800,000 acre-feet of water and use it for fishery purposes. To solve this problem, Interior developed a final administrative proposal establishing the (b)(2) actions. This decision uses the 800,000 acre-feet not by counting each acre-foot, but rather by prescribing certain actions to be taken, such as reducing export pumping during certain times of the year. This approach in effect means that the (b)(2) actions are the functional equivalent of 800,000 acre-feet of water and provide an equivalent level of fishery protection.

The current position taken by the Department of Water Resources is counter to Interior's position and under review by the State Resources Agency. Under Governor Wilson, DWR has taken the position that implementing all of the b(2) actions reduces the CVP water users' supply by an amount greater than 800,000 acre-feet. At this time, DWR's policy requires both the SWP and the CVP water users to receive replacement supply for the additional reductions resulting from implementation of all b(2) actions. The SWP contractors have taken the same position.

The environmental community believes that the CVPIA does not require Interior to make up for water reductions to CVP contractors resulting from the (b)(2) actions. Some environmental groups believe that the (b)(2) actions do not use all of the 800,000 acre-

feet of water allowed by the CVPIA. Others believe that the 800,000 acre-feet is not fully used unless actual water deliveries to CVP contractors are reduced by 800,000 acre-feet every year. In either case, the environmental community generally believes that the (b)(2) actions went a fair distance toward, but ultimately fell short of fully using all 800,000 acre-feet allowed by the CVPIA.

Because the environmental community believes that Interior's (b)(2) decision did not fully use the 800,000 acre-feet, they believe the reductions forecasted by DWR for the CVP contractors should not be replaced. The environmental community views any reductions that may result to CVP contractors as simply part of the 800,000 acre-feet provided by the CVPIA. However, the environmental community's view of reductions to SWP contractors is different. While they generally believe it is wrong for DWR to ever increase the SWP deliveries as a result of the (b)(2) actions (a situation that can occur in some years), most believe that water supply reductions resulting from their voluntary assistance in implementing the (b)(2) actions may be replaced.

The resulting situation is that most of the stakeholder community believes it is appropriate to replace reductions in water supplies to CVP and SWP contractors if the reduction resulted from implementing a Pilot Project action. The rationale being that these types of actions are not mandated by state or federal law or policy; they are simply actions "above (b)(2)" which are intended to further enhance fisheries without using traditional regulatory standards.

Similarly, most of the stakeholder community believes that it is appropriate to replace reductions in water deliveries to SWP contractors resulting from DWR's voluntary assistance in implementing the (b)(2) actions. The rationale is that CVPIA is a federal law that provides for the (b)(2) actions and that law does not require the State to share in making the 800,000 acre-feet available.

The area of contention is whether or not it is appropriate to replace reductions in water deliveries to CVP contractors that result from the implementation of all of the (b)(2) actions. The environmental community believes that these reductions are part of the full use of the 800,000 acre-feet while the CVP contractors, SWP contractors and, currently, DWR believe that implementing all of the (b)(2) actions uses in excess of 800,000 acre-feet, and therefore certain reductions should be replaced.

The Timing of Issues

All stakeholders will be expecting the water options to be used to meet their needs this year. If all of the options were dedicated to the Pilot Project actions, more project actions would be possible this year. Because the options are to cover Pilot Project actions and (b)(2) actions, the Pilot Project actions will have to be chosen more carefully. For this same reason, selection and implementation of the Pilot Project actions may be controversial. It will be necessary to implement enough Pilot Project actions to test the EWA concept sufficiently, yet not dedicate all of the water options solely for those

actions. The CALFED Policy Group may need to decide how much of the water options will be available for Pilot Project actions or develop criteria for implementing actions this year. A decision on the size of the Pilot Project water account or the criteria should be reached by early April 1999.

The water options should be established in the spring of this year to enable the transfer of any water supply impacts related to implementing (b)(2) actions or the Pilot Project actions to upstream storage reservoirs by the end of the summer. Transferring the impacts upstream minimizes the risk of calling upon the water options in 2000. If the rainy winter months are wet enough to naturally replace the decreased reservoir supply, it will not be necessary to exercise the water options. If this is the case, the difference between the views over reductions resulting from (b)(2) actions will be moot by spring of next year. However, if the rainy winter months are not wet enough to naturally replace the decreased reservoir supply then it will be necessary to exercise the water options in the spring of 2000.

If the water options are exercised to replace reductions that resulted from Pilot Project actions, the agricultural, urban, and environmental communities will be in general agreement that the use is appropriate. Similarly, if the water options are used to replace reductions to SWP contractors that resulted from DWR's voluntary assistance in implementing the (b)(2) actions, these communities will agree that it is an appropriate use of the water options. However, if the water options are exercised to replace reductions to CVP contractors that resulted from Interior's implementation of the (b)(2) actions, the CVP and SWP contractors will be satisfied and the action will be consistent with DWR's current policy, but the environmental community will adamantly disagree.